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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

MICHAEL DASRATH, Plaintiff, vs. CONTINENTAL AIRLINES, INC., Defendant.	Civil Action No.: 02-2683 (DRD) **CONTINENTAL AIRLINES, INC.'S ANSWER TO THE COMPLAINT, SEPARATE DEFENSES, AND JURY DEMAND**

FILED
FEB 25 2003
AT 8:30 ____M
WILLIAM T. WALSH
CLERK

Defendant, Continental Airlines, Inc. ("Continental"), by way of this Answer to the Complaint, states as follows:

NATURE OF THE CASE

1. Continental admits that the plaintiff has filed a Complaint seeking declaratory, injunctive and other relief against it; however, Continental denies the remaining allegations contained in paragraph 1 of the Complaint.

JURISDICTION AND VENUE

2. The allegations contained in paragraph 2 of the Complaint contain legal conclusions to which no response is necessary.

3. The allegations contained in paragraph 3 of the Complaint contain legal conclusions to which no response is necessary.

INTRODUCTORY STATEMENT

4-5. To the extent that paragraphs 4 through 5 of the Complaint do not contain factual allegations against Continental, no response is necessary thereto. Continental admits that it received e-mails from the United States Department of Transportation (the "DOT"), and it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in these paragraphs pertaining to statements made by various individuals and/or entities and, therefore, it leaves plaintiff to his proof thereof. Continental denies the remaining allegations contained in these paragraphs.

6. Continental denies the allegations contained in the first sentence of paragraph 6 of the Complaint insofar as these allegations pertain to it. Continental admits the allegations contained in the second sentence of this paragraph. As for the allegations contained in the third sentence of this paragraph, Continental admits that several complaints of this nature were lodged with the DOT against it, but none of them were substantiated and/or no action was taken by the DOT on them.

7. Continental denies the allegations contained in paragraph 7 of the Complaint based upon the facts and circumstances presented to it in the moments prior to the subject flight's takeoff.

THE PARTIES

8. Continental is without information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of the Complaint and leaves plaintiff to his proof thereof.

9. Continental is without information sufficient to form a belief as to the truth of the allegations contained in paragraph 9 of the Complaint and leaves plaintiff to his proof thereof.

10. Continental admits the allegations contained in paragraph 10 of the Complaint.

11. Continental admits that it received federal financial assistance from the DOT, and it is in the process of verifying the amount alleged in paragraph 11 of the Complaint and can neither admit nor deny that precise amount at this time.

FACTS GIVING RISE TO THIS ACTION

12. Continental admits the allegations contained in paragraph 12 of the Complaint relative to plaintiff's travel plans. Continental is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph and leaves plaintiff to his proof thereof.

13. Continental admits that plaintiff's wife is employed by it and that he was eligible to fly as a non-revenue passenger subject to certain restrictions. Continental is without knowledge or information sufficient to form a belief as to the truth and accuracy of the remaining allegations of paragraph 13 of the Complaint and leaves plaintiff to his proof thereof.

14. Insofar as paragraph 14 of the Complaint is concerned, Continental admits that plaintiff was "listed" for the flight in question, on a stand-by basis, as a "non-revenue" passenger with an electronic ticket.

15. Continental is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 15 of the Complaint and leaves plaintiff to his proof thereof.

16. Continental is without knowledge or information sufficient to form a belief as to the truth and accuracy of the allegations contained in paragraph 16 of the Complaint and leaves plaintiff to his proof thereof.

17. Continental is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17 of the Complaint and leaves plaintiff to his proof thereof.

18. Continental admits that plaintiff was traveling on Flight #1218 as a "non-revenue" passenger, and he was upgraded from a coach class listing and assigned a seat in the first class

section of the subject aircraft. Continental is without knowledge or information sufficient to form a belief as to the truth and accuracy of the remaining allegations contained in paragraph 18 of the Complaint and leaves plaintiff to his proof thereof.

19. Continental is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 19 of the Complaint and leaves plaintiff to his proof thereof.

20. Continental is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20 of the Complaint and leaves plaintiff to his proof thereof.

21. Continental is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 21 of the Complaint and leaves plaintiff to his proof thereof.

22. Continental is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 22 of the Complaint and leaves plaintiff to his proof thereof.

23. Except to admit that at one point prior to takeoff a female passenger reported that plaintiff and two other passengers were behaving suspiciously, Continental is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 23 of the Complaint and leaves plaintiff to his proof thereof.

24. Continental is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 24 of the Complaint and leaves plaintiff to his proof thereof.

25. Continental admits that at one point prior to takeoff one of its employees boarded the subject flight and asked three passengers including plaintiff to retrieve their belongings and deplane. Continental denies that this employee had the title "senior Continental gate agent". Continental is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 25 of the Complaint and leaves plaintiff to his proof thereof.

26. Continental admits that at some point prior to takeoff, its captain learned that plaintiff was a "non-revenue" passenger.

27. Continental denies the allegations contained in paragraph 27 of the Complaint.

28. Continental admits that plaintiff and the other two passengers returned to the gate area after being removed from the flight in question. Continental is without knowledge or information sufficient to form a belief as to the truth and accuracy of the remaining allegations contained in paragraph 28 of the Complaint and leaves plaintiff to his proof thereof.

29. Continental admits that alternative travel arrangements were made for plaintiff the same day on Continental Flight No. 1292, and it otherwise is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 29 of the Complaint and leaves plaintiff to his proof thereof.

30. Continental admits that alternative travel arrangements were made for plaintiff on Continental Flight No. 1292. Continental is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 30 of the Complaint and leaves plaintiff to his proof thereof.

31. Continental is without knowledge or information sufficient to form a belief as to the truth and accuracy of what other unidentified individuals told him about his suitcase. Continental admits the remaining allegations contained in paragraph 31 of the Complaint.

32. Continental is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 32 of the Complaint and leaves plaintiff to his proof thereof.

33. Continental admits that plaintiff's computer was damaged and that he was reimbursed therefore. Continental is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 33 of the Complaint and leaves plaintiff to his proof thereof.

34. Continental is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 34 of the Complaint and leaves plaintiff to his proof thereof.

REQUISITES FOR RELIEF

35. Continental denies the allegations contained in paragraph 35 of the Complaint.

36. Continental denies the allegations contained in paragraph 36 of the Complaint.

CLAIMS FOR RELIEF

COUNT ONE

37. Continental repeats and realleges its responses to the allegations as contained in this answer as if fully set forth at length herein.

38. Continental admits the pilot, flight crew, and gate agents for the flight in question as specified in paragraph 38 of the Complaint were its employees.

39. Paragraph 39 of the Complaint contains a legal conclusion to which no response is necessary. Continental denies that its employees engaged in any unlawful acts relative to the plaintiff based upon the facts and circumstances presented to them in the moments prior to the subject flight's takeoff.

40. Continental denies the allegations contained in paragraph 40 of the Complaint based upon the facts and circumstances presented to it in the moments prior to the subject flight's takeoff.

41. Continental denies the allegations contained in paragraph 41 of the Complaint.

COUNT TWO

42. Continental repeats and realleges its responses to the allegations as contained in this answer as if fully set forth at length herein.

43. The allegations contained in paragraph 46 of the Complaint seek a legal conclusion to which no response is necessary. Continental denies that it discriminated against plaintiff based upon the facts and circumstances presented to it in the moments prior to the subject flight's takeoff.

44. Continental denies the allegations contained in paragraph 44 of the Complaint.

COUNT THREE

45. Continental repeats and realleges its responses to the allegations as contained in this answer as if fully set forth at length herein.

46. The allegations contained in paragraph 46 of the Complaint seek a legal conclusion to which no response is necessary.

47. Continental admits that the pilot, flight crew, and gate agents for Continental flight 1218 on December 31, 2001 were its employees.

48. The allegations contained in paragraph 48 of the Complaint seek a legal conclusion to which no response is necessary. Continental denies that its employees engaged in any unlawful conduct relative to plaintiff based upon the facts and circumstances presented to it in the moments prior to the subject flight's takeoff.

49. Continental denies the allegations contained in paragraph 49 of the Complaint.

50. Continental denies the allegations contained in paragraph 50 of the Complaint.

PRAYER FOR RELIEF

WHEREFORE, Continental seeks a judgment dismissing the allegations contained in the Complaint with prejudice, together with attorneys fees, costs, expenses and such other relief as the Court deems necessary and proper.

SEPARATE DEFENSES

FIRST SEPARATE DEFENSE

The plaintiff's Complaint is barred by reason of the Statute of Limitations or other applicable rules, statutes or regulations controlling or requiring the initiation of a suit within a certain period of time following the accrual of the cause of action.

SECOND SEPARATE DEFENSE

The plaintiff's Complaint fails to state a claim upon which relief can be granted.

THIRD SEPARATE DEFENSE

The plaintiff's Complaint is barred by virtue of the Doctrine of Estoppel, Doctrine of Latches, Doctrine of Waiver and/or the Doctrine of Unclean Hands.

FOURTH SEPARATE DEFENSE

The plaintiff's Complaint is barred by virtue of the Doctrine of Res Judicata, Collateral

Estoppel and/or the Entire Controversy Doctrine.

FIFTH SEPARATE DEFENSE

There is a lack of jurisdiction over the subject matter of this litigation and Continental reserves the right to move for a dismissal.

SIXTH SEPARATE DEFENSE

Continental, at all times relevant hereto, acted reasonably and in good faith, and with due care for the rights and safety of the plaintiffs and their property.

SEVENTH SEPARATE DEFENSE

The alleged occurrence was not caused by the acts or omissions of Continental.

EIGHTH SEPARATE DEFENSE

Continental owed no duty to the plaintiffs.

NINTH SEPARATE DEFENSE

Continental did not breach any duty owed to the plaintiffs.

TENTH SEPARATE DEFENSE

The alleged occurrence was not reasonably forseeable by Continental.

ELEVENTH SEPARATE DEFENSE

Continental owed no express or implied contractual obligation or duty to the plaintiffs.

TWELFTH SEPARATE DEFENSE

The plaintiffs were comparatively negligent pursuant to N.J.S.A. 2A:15-5.1, et seq., and, therefore, are not entitled to recovery for their alleged damages, or in the alternative, the plaintiffs' damages must be reduced by their percentage of negligence.

THIRTEENTH SEPARATE DEFENSE

The plaintiffs voluntarily assumed the risk of injury.

FOURTEENTH SEPARATE DEFENSE

The alleged occurrence was caused by superseding and intervening acts or omissions of third parties over whom Continental had no control.

FIFTEENTH SEPARATE DEFENSE

The alleged occurrence was caused by superseding and intervening conditions over which Continental had no control.

SIXTEENTH SEPARATE DEFENSE

Any recovery by the plaintiffs are barred because the plaintiffs failed to mitigate any alleged injuries or damages sustained by the plaintiffs.

SEVENTEENTH SEPARATE DEFENSE

The plaintiffs are barred from recovering any damages for which compensation was received or may be received from a collateral source.

EIGHTEENTH SEPARATE DEFENSE

Continental complied with all the provisions of the Federal Aviation Act, its predecessors, its progeny and the rules and regulations promulgated pursuant thereto.

NINETEENTH SEPARATE DEFENSE

In the event that plaintiff's travel is deemed or discovered to be international, then Continental raises all applicable Articles of the Foreign Sovereign Immunities Act.

TWENTIETH SEPARATE DEFENSE

In the event that plaintiff's travel is deemed or discovered to be international, then Continental raises all applicable Articles of the Montreal Agreement.

TWENTY-FIRST SEPARATE DEFENSE

In the event that plaintiff's travel is deemed or discovered to be international, then Continental raises all applicable Articles of the Hague Protocol.

TWENTY-SECOND SEPARATE DEFENSE

In the event that plaintiff's travel is deemed or discovered to be international, then Continental raises all applicable Articles of the Convention for the Unification of certain Rules relating to International Transportation by Air: 49 Stat., Part II, p. 3,000 (hereinafter referred to as the Warsaw Convention) including but not limited to exclusions as to damages and liability.

TWENTY-THIRD SEPARATE DEFENSE

That if any of plaintiffs' claims relate to rates, routes or services as set forth in the 1978 Airline Deregulation Act, formerly codified as 49 U.S.C. 1305, now recodified and incorporated into 49 U.S.C. 41713(b)(1), then plaintiffs' claims are preempted by same.

TWENTY-FOURTH SEPARATE DEFENSE

That the Federal Aviation Act of 1958, P.L. 85-726, 72 Stat. 731, formerly codified as 49 U.S.C. Section 1301, et. seq., now recodified and incorporated into 49 U.S.C. 40101, et. seq., including but not limited to 49 U.S.C. §44902 and §44941, and the regulations and tariffs promulgated thereunder implicitly preempt and/or preclude any State law or other standards governing flight operations and security and boarding procedures related thereto.

TWENTY-FIFTH SEPARATE DEFENSE

Defendant denies that any of their alleged conduct was at any time malicious, intentional, willful or wanton and that plaintiff's Complaint fails to state facts sufficient to support punitive damages.

TWENTY-SIXTH SEPARATE DEFENSE

The use of State law to contradict or supplement federal aviation legislation and the regulations promulgated thereunder would be an unconstitutional burden on interstate air commerce.

TWENTY-SEVENTH SEPARATE DEFENSE

The defendant's decisions and/or acts were justified.

TWENTY-EIGHTH SEPARATE DEFENSE

The plaintiff's sole remedy for removal from defendant's aircraft is limited by the tariff and the conditions of carriage set forth in their ticket to a refund of the unused portion of his ticket, if any.

TWENTY-NINTH SEPARATE DEFENSE

The defendant's communications with law enforcement authorities are privileged.

THIRTIETH SEPARATE DEFENSE

To the extent that any of the separate defenses to the allegations of the Complaint asserted herein on behalf of defendant are deemed affirmative defenses, they are specifically realleged, reiterated and incorporated herein as affirmative defenses.

JURY DEMAND

Continental hereby demands a trial by jury on all issues so triable.

DESIGNATION OF TRIAL COUNSEL

Continental hereby designates Peter B. Van Deventer, Jr., Esq. as trial counsel in this matter.

Respectfully submitted,

ST. JOHN & WAYNE, L.L.C.
Attorneys for Continental Airlines, Inc.

BY: Peter B. Van Deventer
Peter B. Van Deventer, Jr.

DATED: February 25, 2003